

Message Text

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ACTION IO-13

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UNCLAS SECTION 1 OF 2 USUN 1228

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SUBJECT: TRANSNATIONAL CORPORATIONS - CODE OF CONDUCT

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TRANSMITTED BELOW ARE THE FIRST SECTIONS OF THE TENTATIVE
ANNOTATION OF A CODE OF CONDUCT WHICH WERE PREPARED BY
THE TRANSNATIONAL COROPORATION SECRETARIAT ON THE BASIS OF
DISCUSSIONS OF THE WORKING GROUP. THE REMAINING SECTIONS
WILL FOLLOW. THE SECRETARIAT DRAFT WILL BE THE SUBJECT OF
INFORMAL DISCUSSION AND NEGOTIATIONS DURING THE WEEK OF
APRIL 25. THE G-77 APPEAR PREPARED TO WORK ON THE BASIS
OF THE SECRETARIAT DRAFT RATHER THAN SUBMIT THEIR OWN ANNO-
TATED OUTLINES.

QUOTE

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INTERGOVERNMENT WORKING GROUP
ON A CODE OF CONDUCT
SECOND SESSION, 18-22 APRIL 1977
NEW YORK

TENTATIVE ANNOTATION OF CODE OF CONDUCT

I. PREAMBLE (OBJECTIVES)

THE PREAMBLE (OBJECTIVES) COULD REFER TO:

- DECLARATION AND PROGRAMME OF ACTION FOR THE ESTABLISHMENT OF A NEW INTERNATIONAL ECONOMIC ORDER: GENERAL ASSEMBLY RESOLUTION 3201 (S/VI) AND 3202 (S/VI) OF 1 MAY 1974; IN PARTICULAR RELEVANT PROVISIONS ON TRANSNATIONAL CORPORATIONS.

- RELEVANT PARTS OF THE CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES: GENERAL ASSEMBLY RESOLUTION 3281 (XXXIX) OF 12 DECEMBER 1974.

- RELEVANT PARTS OF THE LIMA DECLARATION AND PLAN OF ACTION ON INDUSTRIAL DEVELOPMENT AND CO-OPERATION ADOPTED BY THE SECOND GENERAL CONFERENCE OF UNIDO, 26 MARCH 1975.

- PARAGRAPH 6 (B) OF THE REPORT OF THE COMMISSION ON TRANSNATIONAL CORPORATIONS ON ITS SECOND SESSION ("TO SECURE EFFECTIVE INTERNATIONAL ARRANGEMENTS FOR THE OPERATION OF TRANSNATIONAL CORPORATIONS DESIGNED TO PROMOTE THEIR CONTRIBUTION TO NATIONAL DEVELOPMENT GOALS AND WORLD ECONOMIC GROWTH WHILE CONTROLLING AND ELIMINATING THEIR NEGATIVE EFFECTS.")

II. DEFINITIONS

- THE NEED TO DEFINE TRANSNATIONAL CORPORATIONS AS WELL
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AS SOME OTHER FUNDAMENTAL CONCEPTS IS RECOGNIZED.

- STARTING WITH A BROAD AND GENERAL APPROACH REGARDING DEFINITION OF TRANSNATIONAL CORPORATIONS, THE WORKING GROUP WILL ATTEMPT TO EVOLVE A DEFINITION, MORE PRECISE THAN THE ONE CONTAINED IN THE REPORT OF THE GROUP OF EMINENT PERSONS, ON THE BASIS OF THE WORK OF THE COMMISSION ON THIS SUBJECT AND AS APPROPRIATE IN THE CONTEXT OF THE FORMULATION BY THE GROUP OF SUBSTANTIVE PROVISIONS OF A CODE.

- TO THIS END, CERTAIN CRITERIA MIGHT BE INTRODUCED REGARDING THE CHARACTER OF TRANSNATIONAL CORPORATIONS.

- EFFORTS WILL BE MADE TO CO-ORDINATE THE WORK ON DEFINITIONS WITH OTHER UNITED NATIONS BODIES DEALING WITH MATTERS RELATED TO TRANSNATIONAL CORPORATIONS.

III. MAJOR PRINCIPLES AND/OR ISSUES RELATED TO THE

ACTIVITIES OF TRANSNATIONAL CORPORATIONS

A. GENERAL AND POLITICAL

1. RESPECT OF NATIONAL SOVEREIGNTY AND OBSERVANCE OF
DOMESTIC LAWS

- RESPECT FOR NATIONAL SOVEREIGNTY BY TRANSNATIONAL
CORPORATIONS.

- OBSERVANCE BY TRANSNATIONAL CORPORATIONS OF
DOMESTIC LAWS, REGULATIONS AND ADMINISTRATIVE PRACTICES.

- RIGHT OF THE HOST COUNTRY TO REGULATE THE ACTIVITIES
OF TRANSNATIONAL CORPORATIONS.

- PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES AND RIGHTS
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OF THE HOST COUNTRY TO EXERCISE EFFECTIVE CONTROL OVER
ITS WEALTH, RESOURCES AND ECONOMIC ACTIVITIES.

- EXCLUSIVE JURISDICTION OF NATIONAL COURTS OVER ACTIVITIES
OF TRANSNATIONAL CORPORATIONS IN HOST COUNTRIES.

- APPLICATION OF INTERNATIONAL LAW AND SETTLEMENT OF ISSUES
OF JURISDICTION.

(ON ALL ABOVE ISSUES CROSS-REFERENCE IS ALSO MADE TO
OTHER ITEMS IN CHAPTER III AND CHAPTER IV.)

2. ADHERENCE TO ECONOMIC GOALS AND DEVELOPMENT OBJECTIVES

- ADHERENCE BY TRANSNATIONAL CORPORATIONS TO ECONOMIC
GOALS AND DEVELOPMENT OBJECTIVES OF HOST COUNTRIES.

- CLOSE ASSOCIATION BY TRANSNATIONAL CORPORATIONS WITH
AND POSITIVE CONTRIBUTION TO THE DEVELOPMENT EFFORTS
OF HOST COUNTRIES BOTH IN THE NATIONAL AND THE REGIONAL
INTEGRATION CONTEXTS.

- ADAPTATION OF TRANSNATIONAL CORPORATION STRATEGIES
AND OPERATIONS TO EXPLICIT PRIORITIES OF HOST COUNTRIES AND
FREQUENT CONSULTATIONS WITH GOVERNMENT AUTHORITIES RE-
GARDING APPROPRIATE WAYS TO MAXIMIZE CONTRIBUTIONS
TO DEVELOPMENT PROCESS.

- EFFORT TO ARRIVE AT MUTUALLY BENEFICIAL RELATIONS AND COM-
PATIBILITY OF INTERESTS OF TNCs WITH THOSE OF HOST
COUNTRIES.

- ADJUSTMENT BY TRANSNATIONAL CORPORATION TO RENEGOTIATE CONTRACTS IN ORDER TO ENSURE THEIR COMPATIBILITY WITH NATIONAL DEVELOPMENT PLANS AND REGIONAL INTEGRATION ARRANGEMENTS.

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(CROSS-REFERENCE IS MADE TO OTHER ITEMS IN CHAPTER III-A AND B AND CHAPTER IV.)

3. ADHERENCE TO SOCIO-CULTURAL OBJECTIVES AND VALUES

- ADHERENCE BY TRANSNATIONAL CORPORATIONS TO SOCIO-CULTURAL OBJECTIVES AND VALUES OF HOST COUNTRIES AND ABSTENTION FROM TRANSPLANTING ALIEN ELEMENTS THAT COULD NEGATIVELY AFFECT THE CULTURAL IDENTITY OF HOST COUNTRIES.

4. RESPECT FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

- RESPECT BY TRANSNATIONAL CORPORATIONS FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS.

- ABSTENTION BY TRANSNATIONAL CORPORATIONS FROM COLLABORATING WITH ILLEGAL RACIST MINORITY REGIMES, PARTICULARLY IN SOUTHERN AFRICA.

5. NON-INTERFERENCE IN INTERNAL POLITICAL AFFAIRS

- ABSTENTION BY TRANSNATIONAL CORPORATIONS FROM INTERVENING IN THE INTERNAL POLITICAL AFFAIRS BY RESORTING TO SUBVERSIVE ACTIVITIES, ATTEMPTING TO OVERTHROW GOVERNMENTS OR ALTERING THE POLITICAL AND SOCIAL SYSTEMS.

- ABSTENTION BY TRANSNATIONAL CORPORATIONS FROM POLITICAL INTERFERENCE CONSIDERED UNACCEPTABLE BY THE LAWS OF THE COUNTRY CONCERNED AND FROM NON-PERMISSIBLE POLITICAL ACTIVITIES AS DEFINED BY THE HOST COUNTRY.

- ABSTENTION BY TRANSNATIONAL CORPORATIONS FROM ACTING AS VEHICLES FOR THE POLITICAL INTERESTS OF HOME, HOST OR OTHER COUNTRIES.

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(SEE REFERENCES OF HOST AND HOME COUNTRY POLICIES

REGARDING THIS ISSUE IN CHAPTER IV.)

6. NON-INTERFERENCE IN INTERGOVERNMENTAL RELATIONS

- ABSTENTION BY TRANSNATIONAL CORPORATIONS FROM DISTURBING INTERGOVERNMENTAL RELATIONS AS A RESULT OF DISPUTES WITH HOST COUNTRIES.

- ABSTENTION BY TRANSNATIONAL CORPORATIONS FROM REQUESTING THEIR HOME GOVERNMENTS TO EXERT PRESSURE BEYOND THE NORMAL DIPLOMATIC REPRESENTATIVES.

- EXHAUSTION BY TRANSNATIONAL CORPORATIONS OF MEANS AVAILABLE IN THE HOST COUNTRIES FOR RESOLVING DISPUTES BEFORE REQUESTING NORMAL DIPLOMATIC REPRESENTATION BY THEIR HOME GOVERNMENT.

(SEE ALSO RELEVANT PROVISIONS IN CHAPTER IV.)

7. ABSTENTION FROM CORRUPT PRACTICES

- ABSTENTION OF TRANSNATIONAL CORPORATIONS FROM CORRUPT PRACTICES SUCH AS BRIBERY, ILLICIT PAYMENTS, AND OTHER CORRUPT PRACTICES IN HOME, HOST AND OTHER COUNTRIES.

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- ADHERENCE BY TRANSNATIONAL CORPORATIONS TO NATIONAL LEGISLATION REGARDING THE PREVENTION OF CORRUPT PRACTICES.

- RECALLING OF GENERAL ASSEMBLY RESOLUTION 3514 AND ECOSOC RESOLUTION 2041 AND THE CURRENT WORK OF THE AD HOC INTER-

GOVERNMENTAL WORKING GROUP ON THE PROBLEM OF CORRUPT PRACTICES.

(SEE CROSS-REFERENCES REGARDING GOVERNMENT POLICIES ON THIS ISSUE IN CHAPTER IV.)

III. MAJOR PRINCIPLES AND/OR ISSUES RELATED TO THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS

B. ECONOMIC, FINANCIAL AND SOCIAL

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1. OWNERSHIP AND CONTROL

- ADHERENCE TO NATIONAL LAWS REGARDING OWNERSHIP AND CONTROL BOTH AS CONCERN LEGAL ASPECTS OF OWNERSHIP AND THE ACTUAL DECISION-MAKING.

- ADHERENCE TO NATIONAL LEGISLATION AND REGULATIONS REGARDING CONDITIONS OF ENTRY AND ACTIVITIES OF ESTABLISHING AFFILIATES OF TRANSNATIONAL CORPORATIONS, INCLUDING RESTRICTIONS IN PARTICIPATION OR EXCLUSION FROM IDENTIFIED SECTORS OF THE ECONOMY.

- OBSERVANCE OF NATIONAL LAWS AND REGULATIONS BASED ON DEVELOPMENT NEEDS CONCERNING DIVESTITURE AND FADE OUT ARRANGEMENTS.

- EFFECTIVE PARTICIPATION OF NATIONALS OF HOST COUNTRIES IN THE DECISION-MAKING PROCESS OF THE AFFILIATES OF THE TRANSNATIONAL CORPORATIONS.

(CROSS REFERENCE IS MADE TO CHAPTERS III, A.1 AND A.2 AND IV REGARDING CONDITIONS OF INVESTMENT, DIVESTITURE AND FADE OUT.)

2. BALANCE OF PAYMENTS

- FULL CO-OPERATION BY TRANSNATIONAL CORPORATIONS WITH GOVERNMENTS REGARDING BALANCE-OF-PAYMENTS OBJECTIVES IN THE CONTEXT OF ECONOMIC DEVELOPMENT, AND PARTICULAR ATTENTION TO BALANCE OF-PAYMENTS RE REQUIREMENTS OF LEAST DEVELOPED COUNTRIES AND COUNTRIES WHOSE ECONOMIES DEPEND ON ONE OR A FEW COMMODITIES.

- DIRECT AND INDIRECT CONTRIBUTION BY TRANSNATIONAL CORPORATIONS TO BALANCE OF PAYMENTS BY ENCOURAGEMENT, AS APPROPRIATE, OF EXPORTS, IMPORT SUBSTITUTION AND CAPITAL
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INFLOWS.

- AVOIDANCE BY TRANSNATIONAL CORPORATIONS OF EXCESSIVE OR UNTIMELY OUTFLOWS OF EARNINGS THAT AGGRAVATE BALANCE-OF PAYMENTS PROBLEMS; AVOIDANCE OF EXCESSIVE INTEREST RATES IN INTRACOMPANY TRANSACTIONS.
- ENCOURAGEMENT OF REINVESTMENT OF PROFITS IN HOST COUNTRIES.
- ABSTENTION FROM SPECULATIVE AND OTHER SHORT-TERM CAPITAL MOVEMENTS THAT AGGRAVATE BALANCE-OF-PAYMENT PROBLEMS.

3. TRANSFER PRICING

- ADHERENCE BY TRANSNATIONAL CORPORATIONS TO PRICING POLICIES IN THEIR INTRACOMPANY TRANSACTIONS ACROSS NATIONAL BORDERS WHICH REFLECT INTERNATIONAL MARKET PRICES OR ARE BASED ON THE "ARMS LENGTH" OR OTHER APPROPRIATE PRINCIPLES WITH THE VIEW TO AVOIDING ADVERSE EFFECT ON REVENUES, ON BALANCE PAYMENTS AND ON LOCAL COMPETITION IN HOST COUNTRIES.
- WILLINGNESS OF TRANSNATIONAL CORPORATIONS TO PROVIDE INFORMATION TO AUTHORITIES OF HOST AND HOME COUNTRIES ON TRANSFER PRICES AND POLICIES ON WHICH THESE PRICES ARE BASED.

(CROSS REFERENCE IS MADE TO CHAPTERS III, A.1, B.4 (TAXATION) AND IV, REGARDING INTERGOVERNMENTAL CO-OPERATION.)

4. TAXATION

- OBSERVANCE BY TRANSNATIONAL CORPORATIONS OF TAX LAWS AND REGULATIONS OF HOST COUNTRIES.
 - DISCLOSURE BY TRANSNATIONAL CORPORATIONS OF PERTINENT INFORMATION FOR TAX PURPOSES TO AUTHORITIES OF
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HOME AND HOST COUNTRIES.

- FULL ACCOUNT TO BE TAKEN OF WORK CONDUCTED BY THE UNITED NATIONS GROUP ON TAX TREATIES AND THE USEFULNESS OF THE BILATERAL AND, AS APPROPRIATE MULTILATERAL, TAX TREATIES.

(CROSS REFERENCE IS MADE TO III-A-1, III-B-3, III-C AND CHAPTER IV REGARDING INTERGOVERNMENTAL EXCHANGE OF INFORMATION, DOUBLE TAXATION, TAX HAVENS, TAX INCENTIVES AND DISINCENTIVES AND HARMONIZATION.)

5. COMPETITION AND RESTRICTIVE BUSINESS PRACTICES

- ABSTENTION BY TRANSNATIONAL CORPORATIONS FROM ENGAGING IN RESTRICTIVE BUSINESS PRACTICES AND ANTI-COMPETITIVE BEHAVIOUR, INCLUDING ABUSE OF DOMINANT MARKET POSITION, UNFAIR COMPETITION AGAINST LOCAL ENTERPRISES AND PRICE FIXING AMONG TRANSNATIONAL CORPORATIONS.

- CONTRIBUTION BY TRANSNATIONAL CORPORATIONS TO INCREASED COMPETITION IN NATIONAL AND INTERNATIONAL MARKETS.

- FULL ACCOUNT TO BE TAKEN OF THE ONGOING WORK IN UNCTAD AND OTHER INTERNATIONAL BODIES ON RESTRICTIVE BUSINESS PRACTICES WITH THE VIEW TO MAKING USE, AS APPROPRIATE, OF THE RESULTS OF THIS WORK IN THE COURSE OF THE PREPARATION OF THE CODE.

6. TRANSFER OF TECHNOLOGY

- OBSERVANCE BY TRANSNATIONAL CORPORATIONS OF LEGISLATION AND REGULATIONS OF HOST COUNTRIES REGARDING THE PROMOTION OF TRANSFER OF TECHNOLOGY APPROPRIATE TO THE NEED OF THE HOST COUNTRY AT REASONABLE PRICES AND CONTRIBUTION TO THE DEVELOPMENT OF THE SCIENTIFIC AND TECHNOLOGICAL CAPACITIES OF THE HOST COUNTRY.

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- FULL ACCOUNT TO BE TAKEN OF THE ONGOING WORK ON A CODE OF CONDUCT ON TRANSFER OF TECHNOLOGY IN UNCTAD AND ITS AIMS WITH THE VIEW TO ANALYSING EXISTING DRAFTS AND MAKING USE, AS APPROPRIATE, OF THE PROVISIONS OF THE DRAFT CODE IN THE COURSE OF THE PREPARATION OF THE CODE OF CONDUCT BY THE INTERGOVERNMENTAL WORKING GROUP.

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Message Attributes

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